

IN THE SENATE OF THE UNITED STATES.

MAY 12, 1896.—Ordered to be printed.

Mr. MARTIN, from the Committee on the District of Columbia, submitted the following

REPORT:

[To accompany S. 3114.]

The Committee on the District of Columbia, to whom was referred the bill (S. 3114) for the adjustment and payment of certain claims against the District of Columbia by drawback certificates, respectfully report the same with the recommendation that it pass.

A great many years ago, by permission of the United States authorities, the city of Washington constructed a market house now known as the Northern Liberty Market, on a portion of the public grounds at the intersection of Seventh street and New York avenue, then unimproved and unoccupied.

By ordinance of the city the rights and privileges to the stalls in this market were sold at public auction to the highest bidder for a term of years, generally five years each, the amount of the bid to be paid annually, and in addition the city charged and received in advance an annual rent for each of said stalls and for all privileges granted in the market, and also a license for conducting any market business. The city in this way derived a large revenue from this market and at different times added to the size of it by new constructions.

During the existence of the board of public works extensive improvements were inaugurated in the city, and the board determined to remove the market house. Accordingly, on the afternoon of September 3, 1872, the board issued an order to their agent, Thomas M. Plowman, to remove the market house that night. In obedience to these instructions, Plowman gathered about 200 laborers and, marching to the market house about 7 o'clock in the evening, he proceeded at once with pickaxes, shovels, etc., to pull down and destroy the building. This was entirely without notice to the stall holders; and to their utter surprise they found on the following morning that the building had been torn down, the roof and stalls falling in upon their tools, implements, and the provisions and supplies that they had provided for the next day's market, and that the work had been done in such a reckless, sudden, and violent manner as to destroy their property, ruin their business, and result in the death of two unoffending citizens. In order to make their work complete, the board of public works had succeeded in having all the judges beyond the District limits, or at least beyond reach of any of the parties in interest who might have applied for an injunction.

Whatever may have been the justification in the eyes of the board of public works for this sudden and unexpected and heroic manner of removing this market, there is no question that just compensation should be made to those citizens whose property was thus sacrificed. Not only should they receive compensation for the property actually destroyed or injured, but they should also receive repayment for any sums of money which they had, in accordance with law, paid for the rights and privileges of conducting their business in the market house, to the extent of the unexpired term for which they had paid and of which they had been deprived. These two matters alone are covered by the bill. At least one party had paid in August for his license to do business there for twelve months, while the building was destroyed within three weeks after the amount was paid.

In a letter upon this subject Governor Shepherd, who was at that time the head of the board of public works, says:

I take the liberty of saying that I sincerely hope the claims of these citizens will be adjusted and paid.

The Northern Liberty Market was located at the junction of two of the leading avenues and three of the principal streets of the city. It stood immediately in the way of the extensive improvements that were proposed and were then in process of execution, and it became necessary, in order to save delay in the execution of these extensive public improvements, and to avoid the long litigation which would have grown out of putting this matter into court, for the board of public works to take sudden and heroic measures for the removal of this market house. This was done by tearing down and removing said building, by a large force of laborers, as the lesser of two evils, and in full view of the fact that it was better and less expensive to compensate the citizens who might suffer loss in this way rather than to delay the execution of the public work or to go into court for a long period of litigation.

I have always felt that as the property and business of these stall holders were necessarily sacrificed to the public good they were entitled to compensation.

The interest of 3.65 per cent allowed is exactly the amount allowed upon all claims, liquidated and unliquidated, growing out of the extraordinary action of the board of public works. The act of June 20, 1874 (U. S. Stat. L., vol. 18, pt. 3, p. 116), establishing the board of audit to adjust various classes of claims for improvements under the board of public works, provided that these should be paid in bonds of the District of Columbia, bearing 3.65 per cent interest per annum, and the act of June 16, 1880 (U. S. Stat. L., vol. 21, p. 284), referred a number of the claims, which had not been finally adjudicated by the board of audit, to the Court of Claims, and provided, in section 6, that these claims should be paid in 3.65 per cent bonds of the District of Columbia, with a special proviso that before the bonds were delivered for payment of the claims "coupons shall be detached therefrom from the date of said bonds to the date upon which such claims were due and payable."

If parties simply having claims, liquidated or unliquidated, against the District of Columbia for work done by them were allowed interest, it seems to the committee that parties whose property was destroyed or injured and whose money was actually paid for certain privileges which they never enjoyed should not be treated with less consideration.

Some of these parties brought suit against Governor Shepherd for the recovery of damages, but he became insolvent and removed to Mexico, so that judgment was never obtained. Several filed claims before the board of audit, but they were dismissed for want of jurisdiction. At the time this injury was suffered by these parties the supreme court of the District of Columbia held that the District was not responsible for the actions of the board of public works. (See *Barnes v. The District*, 1 MacArthur's Reports, 322.) On March 30, 1876, the United States Supreme Court reversed the above decision and held that the District

was liable for the wrongdoing of the board of public works. (1 Otto, 540.) But this decision came after the expiration of the time within which these parties might have sued under the statute of limitations, and they have, therefore, been entirely without remedy.

The Commissioners report that there has never been any tribunal to which these claims could be presented for this violent destruction of private property. The bill makes no appropriation of funds from the United States Treasury, or from the District funds, but simply provides that these parties shall be issued drawback certificates which may be receivable for unpaid taxes. There are past-due penalties and taxes amounting to at least \$1,500,000 due the District of Columbia, some of which have been due since 1877, and in the opinion of the committee these just claims against the District can be liquidated in this manner, without any material expense to the District, and probably with a benefit resulting from the settlement of some of these past-due taxes, which will result in restoring property to the tax lists which will pay its share of public burdens in the future.

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